

FILED

NOV 29 2011

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOEL B. GUERRERO, # 90598-111,

Plaintiff(s),

vs.

CALIFORNIA DEPT' OF CORRECTIONS
AND REHABILITATION,

Defendant(s).

No. C 11-3132 CRB (PR)

ORDER OF DISMISSAL
WITH LEAVE TO AMEND

Plaintiff, a federal detainee at the federal detention center adjacent to the Federal Correctional Institution (FCI) in Dublin, California, has filed a pro se complaint for damages under 42 U.S.C. § 1983 alleging that he was falsely imprisoned for three months by the California Department of Corrections and Rehabilitation (CDCR).

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." Id. § 1915A(b). Pro se pleadings must be liberally construed, however. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
2 elements: (1) that a right secured by the Constitution or laws of the United States
3 was violated, and (2) that the alleged violation was committed by a person acting
4 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

5 B. Legal Claims

6 A claim of unlawful arrest is cognizable under § 1983 for violation of the
7 Fourth Amendment's prohibition against unreasonable search and seizure if the
8 allegation is that the arrest was without probable cause or other justification. See
9 Pierson v. Ray, 386 U.S. 547, 555-558 (1967); Larson v. Neimi, 9 F.3d 1397,
10 1400 (9th Cir. 1993); Forster v. County of Santa Barbara, 896 F.2d 1146, 1147
11 (9th Cir. 1990). A claim of false imprisonment absent a cognizable claim for
12 wrongful arrest will not ordinarily state an independent claim under § 1983. See
13 Baker v. McCollan, 443 U.S. 137, 142-145 (1979). But if the initial arrest was
14 invalid, a claim of false imprisonment for subsequent detention may be
15 cognizable under § 1983. See Lee v. County of Los Angeles, 250 F.3d 668, 684-
16 85 (9th Cir. 2001) (plaintiff stated claim for due process violation where police
17 allegedly arrested his son without probable cause, detained him without verifying
18 that he was person for whom police had arrest warrant, despite his obvious
19 mental incapacity, and detained him for one day before extradition hearing,
20 which led to his incarceration in another state for two years); see also id. at 683
21 (noting that after lapse of certain amount of time continued detention after it was
22 or should have been known that detainee was entitled to release amounts to due
23 process violation regardless of validity of arrest).

24 Plaintiff's conclusory allegation that he was falsely imprisoned for three
25 months by CDCR will be dismissed with leave to amend to allege specific facts
26 in support of a § 1983 claim for false imprisonment, if possible. Plaintiff is also
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1 advised that he must seek damages for false imprisonment from an individual
2 defendant who actually and proximately caused the deprivation of his federal
3 rights. CDCR is immune from damages under the Eleventh Amendment. See
4 Brown v. Cal. Dep't of Corrs., 554 F.3d 747, 752 (9th Cir. 2009) (California
5 Department of Corrections and California Board of Prison Terms entitled to 11th
6 Amendment immunity from damages).

7 CONCLUSION

8 For the foregoing reasons, the complaint is dismissed with leave to amend,
9 as indicated above, within 30 days of this order. The pleading must be simple
10 and concise and must include the caption and civil case number used in this order
11 and the words FIRST AMENDED COMPLAINT on the first page. Failure to
12 file a proper amended complaint within the designated time will result in the
13 dismissal of this action.

14 Plaintiff is advised that the amended complaint will supersede the original
15 complaint and all other pleadings. Claims and defendants not included in the
16 amended complaint will not be considered by the court. See King v. Atiyeh, 814
17 F.2d 565, 567 (9th Cir. 1987).

18 SO ORDERED.

19 DATED: NOV 29 2011

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21 CHARLES R. BREYER
22 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JOEL B. GUERRERO,
Plaintiff,

Case Number: CV11-03132 CRB
CERTIFICATE OF SERVICE

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION et
al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 29, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Joel B. Guerrero #90598-111
Fed Correctional Institution
5675 8th St. Camp Parks
Dublin, CA 94568

Dated: November 29, 2011

Richard W. Wieking, Clerk



By: Tracy Lucero, Deputy Clerk